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BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
Commissioner - Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

IN THE MATTER OF THE
COMPETITION IN THE PROVISION OF
ELECTRIC SERVICES THROUGHOUT
THE STATE OF ARIZONA.

DOCKET No. RE-00000-C-94-165

Arizona Corporation Commission
~~Arizona Corporation Commission~~

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**WRITTEN COMMENTS REGARDING PROPOSED RETAIL ELECTRIC
COMPETITION RULES (R-14-2-1601 ET SEQ.) SUBMITTED BY
ASARCO INCORPORATED,
CYPRUS CLIMAX METALS COMPANY, ENRON CORP.,
ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION,
MORENCI WATER AND ELECTRIC COMPANY, AJO IMPROVEMENT COMPANY
AND PHELPS DODGE CORPORATION**

September 18, 1998

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Phelps Dodge Corporation

1 ASARCO, Incorporated, Cyprus Climax Metals Company, Enron Corp., Arizonans
2 for Electric Choice and Competition, Ajo Improvement Company, Morenci Water and Electric
3 Company, and Phelps Dodge Corporation (collectively referred to herein as "AECC"), hereby
4 submit their Written Comments on the Proposed Retail Electric Competition Rules (R-14-2-1601,
5 et. seq.) (the "Rules") pursuant to the August 11, 1998 Procedural Order in this docket.

6 At the outset, AECC wishes to commend the Arizona Corporation Commission
7 Staff for its efforts. There have been significant revisions to the Rules culminating in the adoption
8 of the Rules in their current form as an emergency measure on August 10, 1998. See Decision No.
9 61071 (August 10, 1998). As such, the Rules now provide a temporary framework intended to
10 move Arizona towards open retail access to electrical power generation beginning on January 1,
11 1999. Despite significant progress however, the Commission, Affected Utilities, Electric Service
12 Providers and the interested stakeholders still have much to accomplish and many significant issues
13 remain to be addressed before the Rules will provide the permanent foundation needed to ensure
14 full retail access by January 1, 2001.

15 For example, the Affected Utilities' individual stranded cost filings raise a number
16 of difficult issues the resolution of which will impact the ultimate success of electric competition in
17 Arizona. Likewise, the Commission must move expeditiously to authorize certificates of
18 convenience and necessity to new entrants into Arizona's competitive market in order to ensure that
19 customers have available an appropriate range of choices. In addition, the Commission must act
20 aggressively to address the anti-competitive "win-at-all-costs" positions being taken by many of the
21 Affected Utilities in opposing Electric Service Providers' applications for certificates of
22 convenience and necessity and failing to file the appropriate unbundled and stranded cost recovery
23 tariffs, among other actions. By challenging every decision facing the Commission, and by
24 opposing the entrance of new Electric Service Providers into Arizona's marketplace, the Affected
25 Utilities seek to maintain all the benefits of regulation while concurrently recouping all of the
26

1 rewards of competition. The Affected Utilities must be precluded from taking actions that will
2 cripple and postpone full open retail access to the generation of electric power in Arizona.

3 AECC has previously filed written comments regarding the Rules and these prior
4 filings are adopted herein by this reference. See AECC Written Comments dated July 6, 1998 and
5 August 4, 1998; Enron Written Comments dated July 2, 1998. At this time AECC offers the
6 following additional comments regarding the Rules.¹

7 1. **Buy-throughs.** R14-2-1604.G. currently provides that Affected Utilities,
8 Utility Distribution Companies and Load-Serving Entities **may** engage in buy-throughs with
9 individual or aggregated consumers beginning January 1, 2001. Thus, Affected Utilities have
10 unfettered discretion to decide whether to engage in buy-throughs with consumers. As a
11 consequence, the Rules undermine an important safety-net available to consumers in the event that
12 full retail access is delayed.

13 The Legislature recognized the importance of mandating buy-through service when
14 it enacted A.R.S. § 30-803.D. which obligates public power entities to provide buy-through service
15 to consumers on request at no additional charge (except for charges for required transmission,
16 distribution or ancillary services) anytime after January 1, 2001. In this way, A.R.S. § 30-803.D.
17 will ensure that public power entities stay serious about moving towards full open competition for
18 electric power generation by January 1, 2001. The Commission must join the Legislature and
19 require Affected Utilities to offer buy-through services after January 1, 2001. Indeed, the
20 importance of providing consumer protection has been made even more clear by the Affected
21 Utilities' efforts to delay the onset of full competition. This can be accomplished by replacing the
22 word "may" in the first line of R14-2-1604.G. with the word "shall."

23 R14-2-1604.G. also provides that "any buy-through contract shall ensure that the
24 consumer pays all non-bypassable charges that would otherwise apply." The intent of this
25

26 ¹ All references are according to the current rules as adopted by the Commission in Decision No. 61071.

1 provision is unclear. "Non-bypassable" charges are not defined in the Rules. Certainly, and
2 consistent with A.R.S. § 30-803.D., consumers should be responsible for payment of transmission,
3 distribution or ancillary services charges. However, as provided for in the Legislation, consumers
4 selecting buy-through services should not be responsible for additional charges such as brokerage
5 fees and other similar charges. The collection of CTC charges, if any, must be consistent with R14-
6 2-1604.G. which limits stranded cost recovery from a particular customer or customer class to "the
7 same proportion as the recovery of similar costs from such customers or customer classes under
8 current rates."

9 2. **Aggregation.** R14-2-1604.B. currently provides that "Affected Utility
10 customers with single premise non-coincident peak load demands of 40 kW or greater aggregated
11 to a combined load of 1 MW will be eligible for competitive electric services beginning January 1,
12 1999." This language should be clarified to insure that it does not limit aggregation to "single
13 premise" customers.

14 Because the Rules limit eligibility for competitive services to 20% of each Affected
15 Utilities 1995 system peak demand during the phase-in period, Affected Utilities will not be
16 prejudiced by allowing customers to aggregate for the purposes of obtaining competitive electric
17 services. See R14-2-1604.A.1.

18 3. **Special Contracts.** In Rule R14-2-1604, customers with demand loads of 1
19 MW or greater are eligible for competitive electric service commencing January 1, 1999. Any
20 special contract customer would therefore be able to participate in the competitive market upon the
21 expiration of the special contract. However, under the Rule, customers with demand loads of 1
22 MW or greater are limited to 20% of the Affected Utilities' 1995 system peak demand "on a first
23 come, first served basis." This restriction may unintentionally preclude customers with special
24 contracts expiring during the two-year phase-in period from participating in the competitive market.

25 AECC requests that the Rule be amended by deleting from R14-2-1604.A. the
26 phrase, "on a first come, first served basis", and reinserting that phrase in the second sentence

1 following the word "services" in R14-2-1604.A.1. and by deleting the period at the end of the
2 sentence and adding the following: "except as provided in R14-2-1604.A.3." In R14-2-1604.A.2.,
3 add the phrase, "on a first come, first served basis", following the word "allowed" in the fourth
4 sentence.

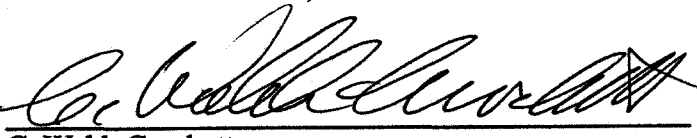
5 Add a new paragraph 3 to R14-2-1604 as follows: "3. Effective January 1, 1999,
6 all load served by Affected Utilities under special contracts will be eligible for competitive electric
7 services upon expiration of the special contract."

8 See the Proposed Amendments attached as Exhibit A.

9 4. Rate Decreases. In R14-2-1604.C., the Commission has required Affected
10 Utilities to detail possible mechanisms to provide benefits to Standard Offer Customers. Among
11 the benefits recommended by the Commission are rate reductions equal to 3% to 5%. The
12 Commission must require that such reductions, ideally intended to benefit customers unable to
13 choose competitive services, are reflected on the distribution portion of the bills sent to Standard
14 Offer Customers. By requiring that the recommended rate reductions be reflected on the
15 distribution portion of Standard Offer billings, the Commission would be promoting rather than
16 discouraging competition.


17 RESPECTFULLY SUBMITTED this 18th day of September, 1998.

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1 PROPOSED AMENDMENT

2 R14-2-1604. Competitive Phases

3 A. Each Affected Utility shall make available at least 20% of its 1995 system retail peak
4 demand for competitive generation supply ~~on a first come, first served basis~~ as further
5 described in this rule.

6 1. All Affected Utility customers with non-coincident peak demand load of 1 MW or
7 greater will be eligible for competitive electric services no later than January 1,
8 1999. Customers meeting this requirement shall be eligible for competitive
9 services on a first come, first served basis until 20% of the Affected Utility's 1995
10 system peak demand is served by competition, except as provided in R14-2-
11 1604(A)(3).

12 2. Affected Utility customers with single premise non-coincident peak load demands
13 of 40 kW or greater aggregated into a combined load of 1 MW or greater will be
14 eligible for competitive electric services no later than January 1, 1999. Self-
15 aggregation is also allowed pursuant to the minimum and combined load demands
16 set forth in this rule. If peak load data are not available, the 40 kW criterion can
17 be determined to be met if the customer's usage exceeded 16,500 kWh in any
18 month within the last 12 consecutive months. From January 1, 1999, through
19 December 31, 2000, aggregation of new competitive customers will be allowed on
20 a first come, first served basis until such time as 20% of the Affected Utility's
21 1995 system peak demand is served by competitors. At that point all additional
22 aggregated customers must wait until January 1, 2001 to obtain competitive
23 service.

24 3. Effective January 1, 1999, all load served by Affected Utilities under special
25 contracts will be eligible for competitive electric services upon expiration of the
26 special contract.

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3.4. Affected Utilities shall notify customers eligible under this subsection of the terms of the subsection no later than October 31, 1998.